

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAII SUPERFERRY, INC.)
For a Certificate of Public)
Convenience and Necessity to)
Engage in Operations as a)
Water Carrier.)
_____)

DOCKET NO. 04-0180

ORDER NO. 21391

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Filed Oct. 1, 2004
At 2 o'clock P.M.

Karen Higashi.
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi.

¹Pursuant to HAR § 6-61-62, the Consumer Advocate is an *ex officio* party to any proceeding before the commission.

submitted a proposed stipulated procedural order ("Proposed Procedural Order") for commission approval.² On August 3, 2004, the commission issued Order No. 21194 approving the Parties' Proposed Procedural Order, subject to certain modifications stated in the aforesaid order and "further modifications, particularly in the event that persons are granted intervenor or participant status in this docket."

On August 19, 2004, YOUNG BROTHERS, LIMITED ("YB") filed a timely motion to participate ("Motion to Participate"), pursuant to HAR §§ 6-61-56 and 6-61-57.

On August 27, 2004, Hawaii Superferry filed a memorandum in opposition to the Motion to Participate ("Opposition"). On September 2, 2004, YB filed a reply memorandum in support of its Motion to Participate ("Reply").

II.

Discussion

A.

YB's Motion to Participate

HAR § 6-61-56 sets forth the requirements for a grant of participation in this proceeding, and provides the commission with the discretion to permit participation in a docket without intervention. Participation means that the person or entity in whose behalf an appearance is entered is "not a party to the

²On July 23, 2004, Hawaii Superferry also filed a request for commission approval of their proposed stipulation for protective order which was executed with the Consumer Advocate to govern the treatment of confidential documents filed in this docket, which they attached to the request. On July 29, 2004, the commission issued Protective Order No. 21190.

proceeding and may participate in the proceeding only to the degree ordered by the commission." HAR § 6-61-56(a); see also, *In re Hawaiian Electric Company, Inc.*, Docket No. 03-0417, Order No. 20861 (March 23, 2004).

In its Motion to Participate, YB represents that it is currently the only regulated common carrier by water, transporting property by barge between the islands of Oahu, Kauai, Maui, Molokai, Lanai and Hawaii. Consequently, it claims that it has a direct and substantial interest in this proceeding that will not be represented by any of the existing parties. In particular, YB states, among other things, that it "would like to ensure that the Hawaii Water Carrier Act is fairly and impartially applied, in the interest of preserving for the public the full benefit and use of the waterways consistent with the public safety and needs of commerce[.]" YB further contends that it has extensive expertise, knowledge and experience as a water carrier of property since 1900, and that, as a participant, it would be able to assist the commission in its review of Hawaii Superferry's Application. As such, YB requests participation status to allow it to be served with all documents filed in this proceeding and to submit a statement of position on the issues raised in this proceeding.³

In its Opposition, Hawaii Superferry asserts that YB should be denied participation status because: (1) YB's operations are substantially different from those proposed by

³YB further states that because it will not be submitting any exhibits or testimony in this matter, its participation will not broaden the issues or unduly delay the proceeding.

Hawaii Superferry; and (2) YB's Motion to Participate does not satisfy the conditions for granting participant status, as set forth in HAR § 6-61-56(c). If YB is granted participant status, Hawaii Superferry contends that YB's participation should be limited to the following: (1) YB should not be entitled to receive or review any confidential documents that are produced or made available for review by Hawaii Superferry under Protective Order No. 21190; (2) YB should be required to submit its Statement of Position on or before October 29, 2004, the same Statement of Position filing deadline for the Consumer Advocate, as set forth in Order No. 21194; and Hawaii Superferry should be allowed to respond to YB's Statement of Position on or before November 30, 2004, the same reply Statement of Position deadline for Hawaii Superferry, as set forth in Order No. 21194.

In its Reply, YB points out the similarity in service being proposed by Applicant, e.g., Hawaii Superferry will be transporting persons and/or property between ports in which YB operates. YB also argues that it has met the standard for a grant of participant status, a less stringent standard than that imposed for intervention status, contrary to Hawaii Superferry's position that YB has not met the standards for participant status, as set forth in HAR § 6-61-56(c).

Upon review, the commission finds the assertions made by YB in its Motion to Participate to be relevant to the instant proceeding and that YB's limited participation, as discussed more specifically below, will not broaden the issues presented, or delay the proceeding. The commission also believes that YB, as

the only regulated common carrier by water, presently transporting property by barge between the islands of Oahu, Kauai, Maui, Molokai, Lanai and Hawaii, likely possesses the relevant expertise, knowledge and experience in the water carrier industry in Hawaii, and that its participation can aid the commission in completing a thorough analysis of the issues in this docket. Nonetheless, we also agree with Hawaii Superferry's arguments that YB's participant status should have certain limitations. We, thus, conclude that YB's Motion to Participate should be granted, subject to the following limitations:

1. YB shall be allowed to receive copies of all correspondence, filings, and briefs that are not designated confidential under Protective Order No. 21190;⁴ and
2. YB shall be allowed to submit a written Statement of Position on the issues established in Order No. 21194, which shall be due on October 29, 2004 and limited to a total of twenty-five (25) typewritten pages.

⁴The commission, nonetheless, reminds the Parties that they must designate information as "confidential" in accordance with the requirements set forth in Protective Order No. 21190. For example, "[i]f a party seeks to designate information as confidential, it must (1) identify, in reasonable detail, the information's source, character, and location, (2) state clearly the basis for the claim of confidentiality, and (3) describe, with particularity, the cognizable harm to the producing party from any misuse or unpermitted disclosure of the information." Protective Order No. 21190 at 4. Moreover, "[w]henever only a portion of a document, transcript, or other material is deemed to contain confidential information, the party shall, to the extent reasonably practicable, limit the claim of confidentiality to only such portion." Protective Order No. 21190 at 5.

Both Hawaii Superferry and YB agreed to the written Statement of Position deadline of October 29, 2004. Thus, consistent with Order No. 21194, we find good cause to also amend the "Schedule of Proceedings" set forth in Order No. 21194 to include certain additional deadlines as follows:

**CA and Participant
Statement of Position ("SOP")**

October 29, 2004

**Hawaii Superferry Reply SOP
to CA and YB SOP***

November 30, 2004

***If the CA or YB objects to approval of the application, or requests that approval be subject to conditions.**

In all other respects, Order No. 21194 remains unchanged.

B.

Public Hearings

As stated in its Application, Hawaii Superferry represents, in relevant part, that it "plans to develop a new mode of interisland transportation within the Hawaiian Islands through the acquisition and operation of high-speed, roll-on/roll-off passenger and vehicle ferries Currently, Hawaii is the world's only major island archipelago without a roll-on/roll-off interisland ferry system." Application at 2. Accordingly, in light of the above representations, the commission finds that the matters of this docket will have a considerable effect on the entire State of Hawaii, and that soliciting public comments through public hearings will be helpful, beneficial and in the public interest. On its own initiative, the commission therefore concludes that public

hearings should be held on the matters of this docket on the islands of Oahu, Hawaii (Kona), Maui and Kauai. The commission is tentatively scheduling the public hearings in November 2004. However, the specific dates, times and locations of these public hearings will be established through "Notice of Public Hearings" to be published, subsequent to the issuance of this order.

III.

Orders

THE COMMISSION ORDERS:


1. YB's Motion to Participate, filed on August 19, 2004, is granted, subject to the limitations set forth in this order.

2. Order No. 21194 is amended consistent with the terms and conditions of this order. In all other respects, Order No. 21194 remains unchanged.

3. Public hearings will be held on the islands of Oahu, Hawaii (Kona), Maui and Kauai. The commission is tentatively scheduling the public hearings in November 2004. However, the specific dates, times and locations of these public hearings will be established through "Notice of Public Hearings" to be published, subsequent to the issuance of this order.

DONE at Honolulu, Hawaii OCT 1 2004.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (Excused)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

04-0180.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21391 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: OCT 1 2004